

3/27/08

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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Mike Gleason, Chairman
 William A. Mundell
 Jeff Hatch-Miller
 Kristin K. Mayes
 Gary Pierce

Arizona Corporation Commission

DOCKETED

MAR 12 2008

FROM: Matthew J. Neubert
 Director of Securities

DOCKETED BY

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DATE: March 10, 2008

RE: Proposed Order to Cease and Desist, Order of Revocation and Consent to Same:
 Donna M. Shurot, Docket No. S-20572A-08-0009

CC: Dean S. Miller, Interim Executive Director

AZ CORP COMMISSION
DOCKET CONTROL

2008 MAR 12 P 4:33

RECEIVED

Attached is a proposed Order to Cease and Desist, Order of Revocation and Consent to Same ("Order") by Respondent Donna M. Shurot, CRD# 1443423 ("Respondent"). Respondent is an Arizona registered securities salesman who operated out of Scottsdale, Arizona in association with BAI Securities, Inc. ("BAI") until BAI discharged Respondent on October 16, 2006, after discovering that customer funds had been deposited into Respondent's accounts. At the time, Respondent had been on medical leave for several months.

Respondent claimed that she could not remember the circumstances of her signing the documents that resulted in the mistaken transfers. Even though she did not use the funds, however, Respondent failed to identify or disclose the unauthorized transfers until after they were discovered by BAI.

In the proposed Order, Respondent has agreed to cease and desist from violations of the Securities Act and revocation of her Arizona securities salesman registration. She has also agreed not to apply in Arizona for registration as a securities salesman or licensing as an investment adviser representative at any time in the future. The Division believes the proposed Order to be in the public interest, and a fair and equitable resolution of this matter.

Originated by: Pam Johnson

MJN/ptj

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3 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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5 COMMISSIONERS

6 MIKE GLEASON, Chairman
7 WILLIAM A. MUNDELL
8 JEFF HATCH-MILLER
9 KRISTIN K. MAYES
10 GARY PIERCE

11 In the matter of)

12 DONNA MARIE SHUROT, a single)
13 individual, CRD #1443423)

14 Respondent.)

DOCKET NO. S-20572A-08-0009

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
OF REVOCATION AND CONSENT TO
SAME**

15 Respondent DONNA MARIE SHUROT, a single individual, ("Respondent") elects to
16 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
17 of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And
18 Desist, Order of Revocation and Consent to Same ("Order"). Respondent admits the jurisdiction
19 of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings
20 of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by
21 the Commission.

22 **I.**

23 **FINDINGS OF FACT**

- 24 1. Respondent was at all relevant times a resident of Gilbert, Arizona.
- 25 2. Respondent was at all relevant times a registered securities salesman in Arizona
- 26 affiliated with Banc of America Investment Services, Inc. ("BAI") in Scottsdale, Arizona since on or
about January 7, 2005, CRD #1443423, until BAI discharged Respondent on October 16, 2006.

Respondent was registered as a securities salesman in Arizona in association with Morgan Stanley DW Inc. from August 21, 1992 to January 7, 2005. Respondent is not currently registered in Arizona with any dealer. Respondent is licensed with the Arizona Department of Real Estate as a salesperson since April 30, 2007.

A. BAI's Discovery of the Transfer of Customer Funds to Respondent's Accounts.

Customer A

3. On or around September 1, 2006, BAI initially learned that customer funds were being deposited into Respondent's accounts when a BAI sales assistant noticed a movement of funds from the estate of Customer A's account at Morgan Stanley to Respondent's personal BAI account. At the time, Respondent had been on medical leave for several months.

4. On August 30, 2006, BAI received a check dated August 29, 2006, in the amount of \$6,712.20 from Morgan Stanley. The check was delivered with a handwritten memo on a distribution form from Customer A's IRA, which stated as follows: "Please make my check payable to Bank of America and mail as follows Bank of America Investment Services 16468 N. Scottsdale Rd #250 Scottsdale, AZ 85254, for credit to [Respondent's BAI account number]," directing the deposit into Respondent's personal BAI account. Customer A had passed away on April 29, 2006. On September 1, 2006, BAI reversed the transaction, calculated interest, and returned the funds to Customer A's account.

5. BAI's discovery of the September 1, 2006 event prompted BAI to conduct further review of Respondent's activities. Based on that review, the firm discovered two other events related to customer funds and Respondent's accounts:

Customer B

6. A check dated December 15, 2005, for \$58,000, drawn on a bank account belonging to BAI's Customer B, made payable to Bank of America, was directed for deposit into Respondent's personal BAI account. The funds were then removed by Respondent from her BAI account and transferred to her IRA account at BAI. On October 19, 2006, BAI credited Customer

1 B's account \$59,862.42, an amount that reflected all principal and interest from December 15,
2 2005.

3 **Customer C**

4 7. On or about June 20, 2006, a form was submitted to Customer C's bank to transfer
5 the liquidated balance of Customer C's bank account to Respondent's BAI account. Customer C
6 was also a BAI customer. The transaction was never completed because of missing paperwork.
7 Customer C experienced no loss of funds as a result of the transaction.

8 **B. Respondent's Termination, Admissions, and Explanations.**

9 8. Based upon BAI's review and the recommendation of Bank of America, N.A.
10 Corporate Security, BAI terminated Respondent on October 16, 2006. BAI commented on
11 Respondent's termination Form U-6 the following reason for her discharge: "Management loss of
12 confidence."

13 9. Respondent denied use of the customer funds deposited to her accounts, claiming
14 the transfers for her benefit were in error. However, when questioned about the transfers during
15 the course of an investigation by the Financial Industry Regulatory Authority (FINRA),
16 Respondent admitted that the handwriting on the transfers of funds from Customer A's and
17 Customer B's accounts to Respondent's accounts is Respondent's handwriting. Respondent
18 claimed that she could not remember the circumstances of her signing the documents that resulted
19 in the mistaken transfers. However, Respondent failed to identify or disclose the unauthorized
20 transfers until after they were discovered by BAI. When questioned by FINRA concerning the
21 transactions, Respondent claimed that the customers' funds were deposited to her own accounts in
22 error.

23 10. Respondent was not authorized to transfer the customers' funds to her personal
24 accounts.

25 11. Respondent failed to disclose to the customers that Respondent was directing the
26 deposit of the funds into an account controlled by Respondent.

12. Even though none of Respondents' customers suffered losses after the unauthorized funds transfers were discovered and the funds were returned to the customers' accounts, Customer B's funds remained in Respondent's account for a period of ten months before they were discovered by Respondent's dealer and returned to Customer B's account.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondent's conduct violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts or engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

3. Respondent's conduct subjects Respondent to an order of revocation pursuant to A.R.S. § 44-1962. Specifically, Respondent has:

a.) Violated A.R.S. § 44-1991, within the meaning of A.R.S. § 44-1962(A)(2).

b.) Committed dishonest and unethical practices in the securities industry as defined in A.R.S. § 44-1962(A)(10), for:

1. Unreasonable delay in the delivery of securities or funds to the extent that the salesman is in a position to control or direct the delivery of the securities or funds, within the meaning of A.A.C. Rule R14-4-130(A)(1); and/or

2. Making unauthorized use of securities or funds of customers or converting customer securities or funds for personal benefit, within the meaning of A.A.C. Rule R14-4-130(A)(16).

4. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962.

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondent complies with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent's securities salesman registration is revoked.

IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the

Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2008.

DEAN S. MILLER
Interim Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator, voice phone number 602-542-3931, e-mail lhogan@azcc.gov.
(ptj)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent DONNA MARIE SHUROT, an individual, admits the jurisdiction of
3 the Commission over the subject matter of this proceeding. Respondent acknowledges that
4 Respondent has been fully advised of Respondent's right to a hearing to present evidence and call
5 witnesses and Respondent knowingly and voluntarily waives any and all rights to a hearing before
6 the Commission and all other rights otherwise available under Article 11 of the Securities Act and
7 Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order To Cease
8 And Desist, Order of Revocation and Consent to Same ("Order") constitutes a valid final order of
9 the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent understands and acknowledges that Respondent has a right to seek
16 counsel regarding this Order, and that Respondent has had the opportunity to seek counsel prior to
17 signing this Order. Respondent acknowledges and agrees that, despite the foregoing, Respondent
18 freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this
19 Order.

20 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
21 contained in this Order. Respondent agrees that Respondent shall not contest the validity of the
22 Findings of Fact and Conclusions of Law contained in this Order in any present or future
23 administrative proceeding before the Commission or any other state agency concerning the denial
24 or issuance of any license or registration required by the state to engage in the practice of any
25 business or profession.
26

1 6. By consenting to the entry of this Order, Respondent agrees not to take any action
2 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
3 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
4 factual basis. Respondent will undertake steps necessary to assure that all of Respondent's agents
5 and employees understand and comply with this agreement.

6 7. While this Order settles this administrative matter between Respondent and the
7 Commission, Respondent understands that this Order does not preclude the Commission from
8 instituting other administrative or civil proceedings based on violations that are not addressed by
9 this Order.

10 8. Respondent understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. Respondent understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. Respondent agrees that Respondent will not apply to the state of Arizona for
17 registration as a securities dealer or salesman or for licensure as an investment adviser or
18 investment adviser representative at any time in the future.

19 11. Respondent agrees that Respondent will not offer or sell any securities or offer
20 investment advisory services in or from Arizona, and will not exercise any control over any entity
21 that offers or sells securities or provides investment advisory services within or from Arizona at
22 any time in the future.

23 12. Respondent consents to the entry of this Order and agrees to be fully bound by its
24 terms and conditions.

25 ...

26 ...

1 13. Respondent acknowledges and understands that if Respondent fails to comply with
2 the provisions of the order and this consent, the Commission may bring further legal proceedings
3 against Respondent, including application to the superior court for an order of contempt.

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5 
6 DONNA MARIE SHUROT

7 STATE OF ARIZONA)
8) ss
9 County of Maricopa)

10 SUBSCRIBED AND SWORN TO BEFORE me this 6th day of March, 2008.

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12 
13 NOTARY PUBLIC

14 My commission expires:

15 7/15/08

